

ESTTA Tracking number: **ESTTA705691**

Filing date: **10/30/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91215512
Party	Plaintiff BODY VIBE INTERNATIONAL, LLC
Correspondence Address	THOMAS P PHILBRICK ALLMARK TRADEMARK 2089 AVY AVE MENLO PARK, CA 94025 UNITED STATES tom@allmarktrademark.com, allmarktrademark@gmail.com
Submission	Motion to Compel Discovery
Filer's Name	Thomas P. Philbrick
Filer's e-mail	tom@allmarktrademark.com, allmarktrademark@gmail.com
Signature	/Thomas P. Philbrick/
Date	10/30/2015
Attachments	Signed motion to compel discovery Dr Vape.pdf(1105704 bytes) Signed declaration in support of motion to compel.pdf(649295 bytes) Exhibit A tab.pdf(8719 bytes) Exhibit A to Motion to Compel.pdf(45874 bytes) Exhibit B tab.pdf(8718 bytes) Exhibit B April 9th Meet and Confer email cover sheet.pdf(16711 bytes) Exhibit B Letter to David Cox re late discovery responses 04092015.pdf(342254 bytes) Exhibit C tab.pdf(8720 bytes) Exhibit C meet and confer email cover sheet July 2015.pdf(41417 bytes) Exhibit C meet and confer letter copy of July 2015.pdf(283271 bytes) Exhibit D tab.pdf(8718 bytes) Exhibit D final meet and confer phone call summary Oct 2015.pdf(45895 bytes) Exhibit E tab.pdf(8717 bytes) Full scanned copy of Opposers 1st set of interrogatories served 01232015.pdf(2609098 bytes) Exhibit F tab.pdf(8720 bytes) Full scanned copy of Opposers requests for production served 01232015.pdf(1328027 bytes) Certificate of Service for motion to compel.pdf(123110 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application serial no. 85966358 (DR. VAPE)

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC)	
)	
Opposer,)	
)	Opposition No. 91215512
v.)	
)	
Cox, David)	
)	
)	
Applicant.)	

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER'S MOTION TO COMPEL DISCOVERY AND REQUEST TO SUSPEND
PROCEEDING/RESET TRIAL SCHEDULE PENDING DISPOSITION OF MOTION**

Pursuant to 37 CFR Section 2.120(e) and TBMP Sections 523.01 and 523.02, Opposer, BODY VIBE INTERNATIONAL, LLC (hereinafter "Opposer"), by and through its counsel, hereby requests an order compelling Applicant, David Cox (hereinafter "Applicant") to respond in full and without objection to Opposer's First Set of Interrogatories to Applicant and to Opposer's First Set of Requests for Production of Documents and Things directed to Applicant.

A. Background Factual/Procedural History

On January 23, 2015, Opposer served its First Set of Interrogatories to Applicant (“Interrogatories”) and Opposer’s First Set of Requests for Production of Documents and Things directed to Applicant. (“Document Requests”) *See Declaration of Thomas P. Philbrick in Support of Opposer’s Motion to Compel* (“Philbrick Decl.”) at ¶5. At the time the Discovery Requests were served, Applicant was represented by Mark S. Hubert, Esq. who since filed a change of correspondence with the Board on March 18, 2015 which was construed as a withdrawal from representation motion as his name and address were removed from the TTAB’s website. (Opposer confirmed via email correspondence with Mr. Hubert and Applicant on March 19, 2015 that Applicant would be representing himself from that point forward. See attached **Exhibit A** which is a copy of this correspondence.) Also on January 23, 2015, the same day the Discovery Requests at issue were served, Opposer filed a 1) Motion for Sanctions, a 2) Motion to Extend Discovery Period, and 3) an Opposition to Applicant’s Motion to Amend his First Amended Answer. The case was then suspended by Board order on March 2, 2015 with the motions being ruled upon and case re-opened by the Board order issued on September 24, 2015.

Opposer’s first meet and confer letter in connection with its Discovery Requests was forwarded to Applicant on April 9, 2015 via email and 1st class mail. (*See id.* at ¶7, **Exhibit B**) In this letter, Opposer summarized the facts that it too had been somewhat late in serving discovery responses to Applicant, but ultimately, all discovery propounded to it was duly responded to and no objection from Applicant was received regarding the sufficiency of such responses/production. Opposer noted in its April 9th meet and confer that Applicant’s discovery responses (except for the timely served responses to requests for admission) were over one month past the statutory deadline for responses to be served. Noting the requirement of fairness in civil discovery, Opposer acknowledged that Applicant should be entitled to an extension of

time to respond comparable to that of Opposer, but Applicant never contacted Opposer to discuss. Finally, in conclusion to the April 9th letter, Opposer noted that because the opposition was suspended by the Board in March 2015, a motion to compel could not be filed at present, but would be considered were the case to not be decided after the Board ruled on the motions at hand.

In further effort to avert the filing of the instant Motion to Compel, Opposer sent an additional follow up meet and confer letter to Applicant on July 2, 2015. (*See id.* at ¶8, **Exhibit C**) Opposer notes that this opposition case was still suspended in July 2015 so it was not yet permissible under Board procedural rules to file a motion to compel. In Opposer's July 2nd meet and confer follow up, it noted its April 9th letter and stressed that no response had been received despite the passage of nearly three months. Opposer then reiterated its demand to receive responses to the outstanding interrogatories and production requests and indicated that a motion to compel would be required if not responses were received. Finally, in conclusion, Opposer indicated that it truly hoped to avoid the delay associated with the filing of the instant motion given that discovery responses from Applicant were "clearly mandated under the rules."

In a final attempt to resolve this discovery dispute short of filing a Motion to Compel, Opposer's attorney called the Applicant on October 5, 2015, shortly after the Board's order that re-opened this case. (*See id.* at ¶9, **Exhibit D** which is an email summary of the call sent to Applicant) Applicant was constantly cursing and expressing frustration at the case during the October 5, 2015 call. Eventually, Opposer's attorney expressed that this would be the final communication prior to filing a motion to compel. However, in a gesture of good faith, Opposer gave Applicant until October 12, 2015 to forward complete responses. To date, nothing has been received from Applicant, so the instant Motion to Compel is being filed with the Board.

B. The Motion to Compel is Timely

TBMP §523.03 requires in relevant part that a motion to compel discovery “should be filed within a reasonable time after the failure to respond to a discovery request.” As outlined above Applicant’s responses to the interrogatories and requests for production at issue were not due until the end of February 2015 as they were served by 1st class mail on January 23, 2015. However, by that date, a potentially dispositive motion dispute involving possible sanctions, a motion to amend and a motion to extend were already on file and the case was about to be formally suspended by order of the Board on March 2, 2015. As such, Opposer was not eligible to file the motion to compel until after the January 2015 set of motions were ruled upon by the Board. As the case was recently re-opened on September 24, 2015, the motion is timely as the 1st testimony period has not opened and the motion is being filed shortly after the case was brought off of suspended status.

C. Argument

A motion to compel may be filed when a party fails to produce requested documents and fails to respond in any manner to interrogatories and requests for production of documents and things. (*See* 37 C.F.R. 2.120(e)(1)). If the non-moving party cannot show its neglect of its discovery obligations was excusable, the Board generally should order discovery responses be provided without objection. (*See No Fear, Inc. v. Rule*, 54 USPQ 2d 1551, 1554 (TTAB 2000)) In this case, Applicant cannot show that its neglect of its discovery obligations was excusable.

Throughout this discovery dispute, Opposer has met or exceeded the Boards requirement that it “has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement.” (*See* 37 C.F.R. 2.120(e)(1)) During the suspension of this case pending the

disposition of several other motions, Opposer drafted two detailed meet and confer letters, neither of which were responded to by Applicant. (See **Exhibits B & C**) Shortly after the Board reopened this case via its September 24, 2015 order, Opposer's attorney called the Applicant in one final effort to resolve the discovery dispute. Applicant ignored Opposer's confirming email (*See Id at ¶10, Exhibit D*) of October 5, 2015 providing one final opportunity to respond to the outstanding interrogatories and requests for production of documents and things. In view of the above, Opposer has certainly made a good faith effort to resolve this matter short of filing a motion to compel, but unfortunately, it has been left with no choice but to file this motion.

D. Conclusion


Given the foregoing, Opposer submits that Applicant's failure to participate in discovery has been unreasonable as the rules clearly require that responses be provided to interrogatory and request for production of documents and things that are duly served while the discovery period is open. Because Applicant's actions are inexcusable, Opposer should be entitled to the following relief,

1. An Order compelling Applicant to immediately respond to Opposer's First Set of Interrogatories without objection, and an Order compelling Applicant to immediately respond to Opposer's First Set of Requests for Production of Documents and Things without objection and produce all relevant documents and things requested therein; and
2. Deliver copies of all responsive documents to the undersigned at 2089 Avy Ave., Menlo Park, CA 94025.
3. Upon the filing of this motion, Opposer requests that the case be suspended pending the Board's ruling and that trial dates be reset upon issuance of the Board's order.

DATED this 30th day of October, 2015.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.

John E. Russell, Esq.

Attorneys for Opposer

ALLMARK TRADEMARK®

2089 Avy Ave.

Menlo Park, CA 94025

Telephone: (650)233-2789

Facsimile: (650)397-4349

Email: tom@allmarktrademark.com

allmarktrademark@gmail.com

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application serial no. 85966358 (DR. VAPE)

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC)	
)	
Opposer,)	
)	Opposition No. 91215512
v.)	
)	
Cox, David)	
)	
)	
Applicant.)	

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**DECLARATION OF THOMAS P. PHILBRICK IN SUPPORT OF OPPOSER'S
MOTION TO COMPEL**

I, THOMAS P. PHILBRICK, declare as follows:

1. I am over the age of 18 and I am a partner with ALLMARK TRADEMARK, attorneys for Opposer, BODY VIBE INTERNATIONAL, LLC ("Opposer") in the above captioned proceeding.
2. Except as otherwise stated, I make this declaration on personal knowledge in support of Opposer's Motion to Compel to demonstrate the good faith efforts that were undertaken to obtain the requested discovery from David Cox ("Applicant") before making the instant motion.
3. The Exhibits attached hereto are true and correct copies of documents that were exchanged by the parties during the course of this proceeding.

4. On March 19, 2014, Opposer commenced this opposition action against Applicant's application serial number 85966358 for the mark DR. VAPE.

5. On January 23, 2015, Opposer served its First Set of Interrogatories ("Interrogatories") and its First Set of Requests for Production of Documents and Things ("Document Requests") on the Applicant's then counsel of record, Mark Hubert. (See *Interrogatories* and *Document Requests* attached as **Exhibits E and F**, respectively.)

6. With the 30 days response period ("+5 days" for 1st class mail service), Applicant's discovery responses were due at the end of February 2015. No responses of any kind were received and this opposition proceeding was suspended by Board order on March 2, 2015 to rule on Applicant's motion to amend answer, Opposer's Motion for Sanctions, and Opposer's Motion to Extend the Discovery Period.

7. On April 9, 2015, while the opposition case was suspended, Opposer sent a meet and confer letter to Applicant inquiring as to the lack of responses of any kind to the Interrogatories and Document Requests. (See attached **Exhibit B**) In the letter, Opposer indicated that it hoped to resolve the matter without the need for a motion and expected that the responses and production would be received shortly. No response to the meet and confer letter was received.

8. On July 2, 2015, while the opposition case was still suspended, Opposer sent a follow up meet and confer letter reiterating its demand that it receive the responses due on its Interrogatories and Document Requests. Opposer requested that it receive the appropriate responses and production by no later than July 10, 2015 and indicated that it preferred to avoid the additional delay associated with a motion to compel. No response to the July 2015 meet and confer letter was received by Opposer.

9. On September 24, 2015, the Board issued an order resuming prosecution of this case. On October 5, 2015, shortly after issuance of the resumption order, Opposer's attorney, Thomas P. Philbrick, called Applicant in one final effort to resolve this discovery dispute short of filing a motion to compel. Applicant was belligerent during the call, cursing on many different

occasions and provided the impression that he would continue his refusal to respond to the Interrogatories and Document Requests.

10. On the afternoon of October 5, 2015, Opposer's attorney, Thomas P. Philbrick, sent a follow up confirming email summarizing the phone conversation from earlier in the day. (See attached **Exhibit D**) Opposer again stressed that no responses of any kind had been received to the Interrogatories and Document Requests. In a final effort to avert the filing of a motion to compel, Opposer provided Applicant with a final response deadline of October 12, 2015. As no responses have been received, Opposer was left with no choice but to file the instant motion requesting relief from the Board.

11. Accordingly, as detailed herein and in the accompanying Motion, the parties have been unable to reach a resolution to this discovery dispute and as such, Opposer now moves the Board to compel Applicant to fully respond to the outstanding discovery requests, and in doing so, find that Applicant acted without any excusable neglect, and as such forfeited his right to object to the Interrogatories and Documents Requests; and, that he shall immediately produce photocopies of all document production to the offices of the undersigned.

I HEREBY CERTIFY that the above statements are true. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 30th day of October, 2015.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.

John E. Russell, Esq.

Attorneys for Opposer

ALLMARK TRADEMARK®

2089 Avy Ave.

Menlo Park, CA 94025

Telephone: (650)233-2789
Facsimile: (650)397-4349
Email:tom@allmarktrademark.com
allmarktrademark@gmail.com

EXHIBIT A

Tom Philbrick

From: Mark Hubert [markhubert@pacifier.com]
Sent: Thursday, March 19, 2015 4:53 PM
To: Tom Philbrick
Cc: drvapepen@gmail.com
Subject: Re: Withdrawal of representation on Dr. Vape ttab case?

Yes you are correct.

Mark S. Hubert
Mark S. Hubert, P.C.
2300 SW First Avenue, Suite 101
Portland, OR 97201
Office: (503) 234-7711
Cell: (503) 312-0318

The information contained in this message is confidential information intended only for the use of the individual or entity named above and may be attorney/client privileged. If the reader of this message is not the intended recipient or you receive an unrelated attachment, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (503) 234-7711. Thank you.

On Mar 19, 2015, at 3:59 PM, Tom Philbrick wrote:

Dear Mr. Hubert,

I was just about to send out a letter to you regarding the Dr. Vape case discovery and I noticed on the TTAB website that you filed a change of correspondence yesterday to reference the client directly. I just wanted to confirm that this means that I should contact him directly and no longer correspond with your office on this case. I obviously would not want to contact a party to a case directly if he's represented by counsel.

Please let me know so that I can forward this letter to the appropriate party. Thank you.

CC: David Cox at drvapepen@gmail.com

Sincerely,

Tom Philbrick
Attorney at Law

ALLMARK TRADEMARK
Phone: (650)233-2789
www.allmarktrademark.com

EXHIBIT B



Thomas P. Philbrick <tphilbrick@gmail.com>

Meet and Confer Letter Regarding Lack of Responses to Dr. Vape trademark Opposition Discovery

Tom Philbrick <tom@allmarktrademark.com>
To: drvapepen@gmail.com

Thu, Apr 9, 2015 at 3:25 PM

Dear Mr. Cox

Please see attached letter written on behalf of Body Vibe International, LLC regarding the DR. VAPE trademark opposition matter. We look forward to hearing from you soon.

Sincerely,

Tom Philbrick

Attorney at Law

ALLMARK TRADEMARK

2089 Avy Ave.

Menlo Park, CA 94025

t) [\(650\)233-2789](tel:(650)233-2789)

f) [\(650\)233-2791](tel:(650)233-2791)

www.allmarktrademark.com



Letter to David Cox re late discovery responses 04092015.pdf
335K

ALLMARK TRADEMARK ®

2089 Avy Ave.
Menlo Park, CA 94025
Telephone: 650-233-2789
Fax: 650-233-2791

April 9, 2015

VIA FIRST CLASS MAIL and EMAIL TO drvapepen@gmail.com

Mr. David Cox
2359 Erma Ct.
Springfield, OR 97477

**Re: Meet and Confer Letter Regarding Late Discovery Responses in Dr. Vape
Trademark Opposition Case**

Dear Mr. Cox,

Per Attorney Hubert's correspondence of March 19, 2015 informing us of his withdrawal from representing you on the case, we are now corresponding directly with you regarding the Dr. Vape trademark opposition matter. Please consider this letter to be a meet and confer regarding your failure to provide responses of any kind to the bulk of the discovery requests served on Mr. Hubert's office on January 23, 2015.

Out of the requests for admission, requests for document production and interrogatories, our office has only received responses to the requests for admission which were served on our office on February 21, 2015. Given this, the responses to the document production and interrogatory requests are now late as they are well past the regular response period and no extension was sought by you or attorney Hubert. Opposer, (Body Vibe International, LLC) realizes that it was late in certain responses to interrogatories and requests for production, however, responses to your requests were ultimately duly served on Mr. Hubert's office. While you should be entitled to an extension of time as well, we are now well over one month past the statutory deadline for your responses to be served.

As the Board noted in its March 2, 2015 letter, the temporary suspension of the case to rule on the pending motions before it does not toll the time for either party to respond to any outstanding discovery. Given this, please provide your responses to our interrogatories and requests for production of documents by April 16, 2015. If we do not hear from you by then, we will begin preparing a motion to compel the responses thereto for filing upon the re-opening of the case. We hope that such a motion can be avoided as we trust that you will be providing your responses and document production in the coming days.

Thank you and we look forward to hearing from you soon.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas P. Philbrick', written over a horizontal line.

Thomas P. Philbrick, Esq.

John E. Russell, Esq.

ALLMARK TRADEMARK ®

Attorneys for Body Vibe
International, LLC

Phone: (650)233-2789

Email: tom@allmarktrademark.com

CC: Body Vibe International, LLC

EXHIBIT C

Tom Philbrick

From: Tom Philbrick [tom@allmarktrademark.com]
Sent: Thursday, July 02, 2015 11:46 AM
To: 'drvapepen@gmail.com'
Subject: Final Meet and Confer Letter Regarding Lack of Responses to Dr. Vape trademark Opposition Discovery
Attachments: Follow up Letter to David Cox re late discovery responses 07022015.pdf

VIA EMAIL and FIRST CLASS MAIL

Dear Mr. Cox

Please see the attached follow up letter written on behalf of Body Vibe International, LLC regarding the DR. VAPE trademark opposition matter. We look forward to hearing from you soon and receiving responses to the overdue discovery requests.

Sincerely,

Tom Philbrick

Attorney at Law

ALLMARK TRADEMARK

2089 Avy Ave.

Menlo Park, CA 94025

t) (650)233-2789

f) (650)397-4349

www.allmarktrademark.com

ALLMARK TRADEMARK ®

*2089 Avy Ave.
Menlo Park, CA 94025
Telephone: 650-233-2789
Fax: 650-233-2791*

July 2, 2015

VIA FIRST CLASS MAIL and EMAIL TO drvapepen@gmail.com

Mr. David Cox
2359 Erma Ct.
Springfield, OR 97477

Re: Final Meet and Confer Letter Regarding Late Discovery Responses in Dr. Vape Trademark Opposition Case

Dear Mr. Cox,

This letter is a follow up to our April 9, 2015 letter which demanded that we receive responses to Body Vibe's outstanding discovery requests. To date, nearly three months from our initial meet and confer letter, we have not received a response of any kind from you.

Currently, this opposition case is still on suspended status at the TTAB while we await a ruling on the various pending motions. However, under the normal TTAB schedule, we should be receiving a ruling quite soon.

Body Vibe hereby reiterates its demand that it receive responses to the currently outstanding interrogatories and requests for document production. Should we not receive appropriate responses by July 10, 2015 we will presume that you intend not to respond. Should this be the case, Body Vibe will proceed with the filing of a motion to compel production and responses at the TTAB upon the possible reopening of this case.

Please note that Body Vibe prefers to avoid the additional delay associated with a motion to compel, especially in view of the fact that your responses and production of documents are clearly mandated under the rules. However, if we do not receive appropriate responses, you leave Body Vibe no choice in the matter.

Thank you and we look forward to hearing from you by July 10, 2015 with your full and complete interrogatory responses and document production.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas P. Philbrick', with a long, sweeping horizontal line extending to the right.

Thomas P. Philbrick, Esq.

John E. Russell, Esq.

ALLMARK TRADEMARK ®

Attorneys for Body Vibe
International, LLC

Phone: (650)233-2789

Email: tom@allmarktrademark.com

CC: Body Vibe International, LLC

EXHIBIT D

Tom Philbrick

From: Tom Philbrick [tom@allmarktrademark.com]
Sent: Monday, October 05, 2015 3:52 PM
To: 'drvapepen@gmail.com'
Subject: Summary of Meet & Confer phone call regarding Dr. Vape trademark opposition discovery

Dear Mr. Cox,

This email serves to confirm our phone call from earlier today at approximately 12:12pm Pacific Time. (I called you on your 541-517-1335 line) As I mentioned, I was calling about the multiple follow up letters we sent while this Dr. VAPE TTAB opposition case was suspended/on hold about the lack of any response to our interrogatory and request for document production requests. To date, we have not received any reply from you with regard to these letters/emails.

I had difficulty obtaining an answer one way or the other as you were cursing and expressing your frustration with this case. I tried to indicate that I wasn't calling about the details of the case, but whether we would or would not receive appropriate responses to our discovery requests. When we concluded the call, I was under the impression that you were still refusing to respond and I mentioned that we would therefore have to file a "motion to compel" with the TTAB to preserve our rights to discovery.

We will prepare this motion in the coming week and will plan to file it on Monday of next week, October 12, 2015. If you have a change of heart this week, please serve your responses this week via regular mail and provide a courtesy copy via scanned email attachment. Thank you.

Sincerely,

Tom Philbrick
Attorney at Law

ALMARK TRADEMARK
Office: (650)233-2789
Mobile: (415)515-0388
www.allmarktrademark.com

EXHIBIT E

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application serial no. 85966358 (DR. VAPE)

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC)	
)	
Opposer,)	
)	Opposition No. 91215512
v.)	
)	
Cox, David)	
)	
)	
Applicant.)	
<hr/>		

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER BODY VIBE INTERNATIONAL, LLC's FIRST SET OF
INTERROGATORIES TO APPLICANT DAVID COX**

Opposer, **BODY VIBE INTERNATIONAL, LLC** (hereinafter "Opposer"), by and through the undersigned counsel, hereby propounds the following sequentially numbered interrogatories to Applicant, **DAVID COX**, (hereinafter "Applicant"), pursuant to Section 405 of the Trademark Trial and Appeal Board Manual of Procedure and Rule 33 of the Federal Rules of Civil Procedure, and requests that they be answered separately and fully in writing under oath by Applicant within the time period set forth in said Rules.

To the extent that Applicant, after answering these interrogatories, may acquire additional knowledge or obtains information which enlarges, diminishes or otherwise modifies such answers, Applicant is requested promptly thereafter to serve supplemental answers reflecting such knowledge or information.

DEFINITIONS AND INSTRUCTIONS

1 The term “**Applicant**” as used herein refers to **DAVID COX**, any present or former entity, employee, servant, agent, licensee, attorney or other person or representative acting on its’ behalf, and shall include any predecessor or successor or affiliate either within the United States or a foreign country.

2 The term “**Opposer**” shall mean **BODY VIBE INTERNATIONAL, LLC**, its owners, officers, agents, employees and any predecessors or successors in interest.

3 The term “**you**” or “**your**” shall mean the party or person to whom the Interrogatory is propounded, all agents, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

4 The term “**person**” refers both to natural persons and to corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents, and attorneys.

5. The term “**communications**” means all forms of information exchange, whether written, oral, by telephone, telex or other mode of transmission.

6. The term “**document**” shall mean the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise), including but not limited to written, printed, typed and visually or aurally reproduced material of any kind in any media, whether or not privileged or otherwise excludable from discovery, such as (by way of example and not by way of limitation) letters, notes, memoranda, summaries, minutes, correspondence, interoffice communications, invoices, purchase orders, records, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being electronically or mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, e-mail, computer software, microfilm, videotapes, tape or other recordings, test data and reports, telexes, ledger books, statements, memoranda, summaries or records of personal conversations, diaries, reports, development records, specifications, charts, labels, artwork, mock-up labels, films, videotapes, photo boards, drawings, graphs, sketches, tables, photographs, microfilms, minutes or records of meetings, reports and/or summaries of interviews,

reports and/or summaries of investigations, opinions or reports of consultants, opinions of counsel, agreements, memoranda of agreements, assignments, licenses, orders, patents, notebooks, letters, reports or summaries of negotiations, catalogs, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents and revisions of drafts of documents, and other written, typewritten, reproduced, recorded, transcribed, filmed or graphic materials now or formerly in the possession, custody or control of Applicant, or at any time in the possession, custody or control or any agent, representative, affiliates, predecessor or successor of the Applicant. For purposes of these interrogatories, "Document" shall also mean any of the foregoing not in Applicant's possession, custody or control, the existence of which is known to Applicant. For purposes of these interrogatories, any such Document bearing on any sheet or side thereof any marks of any kind, such as initials, stamped indicia, comments or notations, which was not part of the originally created Document, is to be considered and identified as a separate document.

7. The term "**thing**" shall mean all tangible objects of any type, composition, construction or nature.

8. Wherever the **identification of documents** is called for in these interrogatories, in lieu of identification as above, Applicant may produce such documents or a clear and legible copy of the same, suitably organized and labeled to correspond with each separate interrogatory, in accordance with Rules 33(d) and 34(b), for inspection and copying by Opposer at the time Applicant serves answers to these interrogatories or states that it will do so promptly thereafter.

9. "**Identify**," when used with reference to a **natural person**, means state:

- a. the person's full name, address (or, if the present address is not known, the last known address), and phone number;
- b. the full name, address, and phone number of each of the person's employers, each corporation of which the person is an officer or director, and each business in which the person is a principal;
- c. the person's present position (or, if the present position is not known, the last known position), and the person's position or positions at the time of the act to which the interrogatory answer relates;
- d. a brief description of the job responsibilities of such person;
- e. each position the person has ever held with Applicant, and the date such positions were held; and
- f. such other information sufficient to enable Opposer to identify the person.

10. "**Identify**," when used with reference to **any entity** other than a natural person, means state:

- a. its full name or designation;
- b. the legal classification of the entity (e.g., corporation, partnership; etc.), giving the state of incorporation where appropriate;
- c. the principal place of business;
- d. the current or last known address and telephone number of the organization;
- e. any other information reasonably necessary to permit efficient contact with the organization; and
- f. a brief description of the responsibilities of such person.

11. "**Identify**," when used with reference to a **document or communication**, means state:

- a. its nature (e.g., letter, telegram, memorandum, chart, report, study), date, author, date and place of preparation, and the name and address of each addressee, if there is an addressee;
- b. the identity of each signer to the document or communication;
- c. the title or heading of the document or communication;
- d. its substance;
- e. its present (or, if not known, the last known) location and custodian;
- f. the identity of each person to whom a copy was sent, each date of its receipt, and each date of its transmittal or other disposition by (1) Applicant and (2) any other person (naming such other person) who, at any time, either received, transmitted, or otherwise disposed of such document or communication, and each copy thereof;
- g. the circumstances of each such receipt, and each transmittal or other disposition, including identification of the person from whom received and the person to whom transmitted;
- h. the name and address of each recipient of copy of the document;
- i. the author's present or last affiliation with or relationship to the Applicant, if any;
- j. the full name and present or last known residence address of the author;
- k. the date of the document;
- l. the name and address of the person now having possession of the original and the location of the original or, if this information is not presently known to Applicant, the name and address of each person known to Applicant now having possession of a copy and of the present location of each such copy;
- m. whether Applicant is willing to produce such document voluntarily to Opposer for inspection and copying;
- n. if such document was, but no longer is in Applicant's possession or subject to its control, state whether it is (1) missing or lost, (2) has been destroyed, (3) has been transferred voluntarily or involuntarily to others, or (4) otherwise disposed of, and in each instance explain the circumstances surrounding the authorization for such disposition.

12. Applicant may, in lieu of identifying any document, attach a true copy of such document or communication as an exhibit to its answers to these interrogatories, along with an explicit reference to the interrogatory to which each such attached document or communication relates.

13. "**Identify**," when used with reference to an **oral transaction**, means state:

- a. its nature (e.g., telephone call, conversation in person, etc.);
- b. the date and place thereof;
- c. the identity and address of each person participating therein, present during or witness to any part thereof; and
- d. each document in which such transaction or communication was recorded, described, or referred to.

14. **"Identify,"** when used with reference to a **contract**, means state:
- the date and place it was made;
 - the name and address of each party thereto;
 - its terms, including but not limited to, the performance to be rendered by each party;
 - whether the performance was rendered; and
 - whether there has been any litigation with reference to said contract.
15. **"Identify,"** when used with reference to a **statement or representation**, means state:
- the date and place it was made;
 - whether the statement or representation was oral or written;
 - (if the statement or representation was oral), the identity of the oral communication in which it was made; and
 - (if the statement or representation was in writing), the identity of the document in which it was made, indicating the page and line on which the statement or representation was made and the opening and closing words of the statement or representation.
16. **"Identify,"** when used in any **context than set forth above**, means describe:
- the act, word, situation, event, etc. (and/or conduct, course of action of any nature whatsoever, including, without limitation, any failure to act, to engage in any conduct or to pursue any course of action), to be identified as fully as possible; and
 - identify each document or communication in which such act, word, situation, event, conduct or course of action, etc., was recorded, described and referred to.
17. In answering **each interrogatory**, identify each document, communication, or act:
- relied upon in the preparation of each answer;
 - that forms all or part of the basis for that answer;
 - that corroborates the answers; or
 - the substance of which forms all or part of the answer.
18. If all the information furnished in answer to all or part of an interrogatory is not within the personal knowledge of the affiant, identify each person to whom all or part of the information furnished is a matter of personal knowledge and each person who communicated to the affiant any part of the information furnished.
19. If the answer to all or any part of the interrogatory is not presently known or available, include a statement to that effect, furnish the information known or available, and respond to the entire interrogatory by supplemental answer, in writing, under oath, within ten (10) days from the time the entire answer becomes known or available, and in no event, less than thirty (30) days prior to trial.
20. If you claim that any information requested is privileged, please provide all information falling within the scope of the interrogatory which is not privileged, and identify with sufficient

particularity for purposes of a Motion to Compel a Response or Production each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the source of the information or author of the document;
- c. each individual or other person to whom the information or document or copy thereof was disclosed;
- d. the date of the document; and
- e. the general subject matter of the document or information.

21. The term “**mark**” includes trademarks, service marks, collective marks, certification marks and trade names including the terms **DR. VAPE**, and any and all variants, combinations or juxtapositions thereof.

22. The term “**Accused Mark**” includes the mark, **DR. VAPE** and/or any and all variants, combinations or juxtapositions thereof.

23. The term “**Applicant’s Goods and Services**” shall mean any and all goods and services offered by or on behalf of Applicant under any of Applicant’s Marks, including those offered on Applicant’s website.

24. The term “**Opposer’s Mark**” includes the mark, **DR. VAPE** and any and all variants, combinations or juxtapositions thereof.

25. In multi-part interrogatories, the separate parts of such interrogatories are to be read in the context of the entire interrogatory, but each part is to be answered separately.

26. “**And**” as well as “**or**” shall be construed either disjunctively or conjunctively so that each Interrogatory shall be given its broadest possible application. “**Each**” shall be construed to include the word “every” and “every” shall be construed to include the word “each”. “**Any**” shall be construed to include the word “all” and “all” shall be construed to include the word “any”. “**Including**” shall be construed to include the phrase “without limitation”.

27. A **plural noun** shall be construed as a **singular noun**, and a singular noun shall be construed as a plural noun, so that each Interrogatory shall be given its broadest possible application.

28. The use of a **verb in any tense shall** be construed to be the use of a verb in all other tenses, so that each Interrogatory shall be given its broadest possible application.

29. Words of one **gender** shall be construed to include words of all genders, so that each Interrogatory shall be given its broadest possible application.

30. Identify **all persons assisting** in the preparation of answer to these interrogatories.

31. Opposer expressly reserves the right to submit further Interrogatories in this matter.

INTERROGATORIES

1. Identify all predecessors or assigns, employees, and/or other agents or representatives of Applicant, and all persons known to Applicant who have knowledge of the facts and issues involved in this proceeding.

2. State whether Applicant has made use of the Accused Mark in commerce, and if so:

a. identify and describes in detail all services and goods on which Applicant has used the mark in the United State and/or elsewhere;

b. with respect to all services and goods on which the Accused Mark has been used, identify the date on which Applicant first used the mark and all documents evidencing said first use in the United states and elsewhere;

c. Identify all signs, symbols, brochures, handbills, stationery, advertisements, business cards, decals, badges, websites, social media and other printed material used by Applicant which bears the Accused Mark.

3. Describe and specify in detail all bases for Applicant's contention in Applicant's Answer to First Amended Opposition (filed on October 17, 2014) paragraph 7 that states that "Deny Applicant's device is marketed and sold in interstate commerce primarily for use with cannabis" and identify all documents in support or referring or relating hereto and all persons having knowledge relating thereto.

4. Describe and specify in detail all bases for Applicant's decision to simply state "Admit existence of said YouTube video" (rather than admitting or denying that the video depicts the Applicant) in his Answer to Opposer's First Amended Opposition (filed on October 17, 2014) and identify all documents in support or referring or relating hereto and all persons having knowledge relating thereto.

5. Specify the name and description of each type of goods and services in connection with which Applicant has ever used the Accused Mark, or in connection with which Applicant intends to use the Accused Mark, and for each of the goods and services so identified, specify:

a. The date of first use, or first intended use, in the United States of the Accused Mark in connection with said goods and services, state in detail all facts that support these dates, and identify any documents relating thereto;

b. The geographic area, by state, territory, or possession, in which the Accused Mark has been used, and/or will be used, on or in connection with said goods and services, along with the date of first use, and/or first intended use, in such geographic area, state in detail all facts that support these dates, and identify any documents relating thereto;

c. The channels of trade in which each of the goods and services are offered, and/or will be offered, including, but not limited to: (1) a description of the type of sales, e.g., wholesale, retail, direct mail, etc., (2) a description of the type(s) of outlets in which the goods and services will be/are offered to the public, (3) a description of how sales are made to the ultimate user or consumer of Applicant's goods and services, and (4) state in detail all facts that support these channels of trade.

d. The types of customers who are expected to purchase and/or use the goods and services;

e. The approximate gross revenue generated by sales of each of the goods and services under the Accused Mark for each year since such sales began; and

f. The approximate annual dollar amount expended by Applicant in advertising and promoting each of the goods and services under the Accused Mark.

6. Identify all advertising agencies, public relations agencies, online advertising consultants or market research agencies which Applicant has used, participated with, cooperated with or intends to use, participate with, or intends to use in advertising, marketing or promoting the goods and services identified in Interrogatory No. 2 where applicable, and indicate the time period(s) during which such activities were conducted.

7. Describe in detail any advertising conducted by Applicant and identify all advertisements, websites, brochures, catalogs, promotional materials and all other documents and things showing the Accused Mark ever placed, published, distributed, provided or used by or for Applicant, and for each such document specify:

- a. The form of media of each;
- b. The inclusive dates of each;
- c. The geographic range of each;
- d. The amount spent per year of each;
- e. The name and address of a person who has custody of the advertisement or publication in which the subject mark appeared; and
- f. The types of customers to whom each was or will be directed; and
- g. Identify any documents relating thereto.

8. Identify all documents in Applicant's possession or control that refer or relate in any way to or which mention:

- a. The selection of the Accused Mark; and/or
- b. The decision to file, the preparation and prosecution of any state, United States, or foreign trademark applications for the Accused Mark.

9. Identify all documents in Applicant's possession or control that refer or relate to Opposer or Opposer's Mark.

10. Does Applicant contend that its goods or services offered, and/or to be offered, under the Accused Mark are or will be sold to a different class of customers or purchasers than the goods and services of Opposer offered under Opposer's mark?

If so, specify:

- a. The entire factual basis for such contention;
- b. Identify each document on which Applicant will or may rely to support that contention; and
- c. Identify each person on whose testimony Applicant will or may rely in support of that contention.

11. Does Applicant contend that its goods or services offered, and/or to be offered, under the Accused Mark are or will be sold in different channels of trade as the goods and services of Opposer to be offered under Opposer's Mark? If so, specify:

- a. The entire factual basis for such contention;
- b. Identify each document on which Applicant will or may rely to support that contention; and
- c. Identify each person on whose testimony Applicant will or may rely in support of that contention.

12. Identify each person whom Applicant intends to call as a witness in this proceeding and specify for each:

- a. The subject matter upon which he/she is expected to testify;
- b. The substance of the facts and opinions to which he or she is expected to testify;
- c. The grounds for each opinion that he/she is expected to give; and
- d. The designation of each witness as to whether or not a witness is to be called as an expert.

13. If you have a website, specify the exact date that the website went live, describe the goods and services advertised on the site and give the exact date of the availability of those identified goods and services.

14. Identify the predecessor in title if Applicant claims the benefit of any use of the Accused Mark by such a predecessor in title.

15. Identify any licensing agreements entered into by Applicant in connection with the Accused Mark and specify for each:

- a. Then names of the parties that are signatories to the agreement(s);
- b. The date the parties signed the agreement(s)

16. Identify any and all "authorized dealers" of Applicant's goods sold in connection with the Accused mark and specify for each:

- a. Their name, address and telephone number
- b. Their field(s) of business/commerce
- c. Whether they are or are not a cannabis dispensary

17. Describe and specify in detail all bases (including identification of all documents that support the claim) for Applicant's contentions in his answer filed on October 17, 2014 in the section labeled "SEVENTH DEFENSE" where he claims that his product is not marketed for use with controlled substances when his "authorized dealers" are in fact cannabis dispensaries.

18. Identify all agreements (whether oral or reduced to writing), including without limitation, licenses, manufacture/supple, distribution, permissions, consents, assignments, asset or trademark purchases, entered into between Applicant, and any other person or entity involving or relating to the use or right to use the Accused Mark.

19. Identify each current, past and prospective supplier, manufacturer, importer, distributor, wholesaler, retailer, Internet and catalogue seller, and all other current, past and prospective distributors or sellers of Applicant's DR. VAPE branded electric vaporizers in the United States.

20. Describe and specify in detail who Applicant believes to be depicted in Exhibit A to Opposer's amended notice of opposition (filed July 25, 2014) and if Applicant states that it is not the David Cox that is the referenced owner of the Accused Mark, then specify who Applicant believes the person to be and his reasoning behind such a conclusion.

DATED this 23rd day of January, 2015.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By: 

Thomas P. Philbrick, Esq.
John E. Russell, Esq.
Attorneys for Opposer

ALLMARK TRADEMARK®
2089 Avy Ave.
Menlo Park, CA 94025

Telephone: (650)233-2789
Facsimile: (650)233-2791
Email: tom@allmarktrademark.com
allmarktrademark@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER BODY VIBE INTERNATIONAL, LLC's FIRST SET OF REQUESTS FOR ADMISSION DIRECTED TO APPLICANT DAVID COX, FIRST SET OF INTERROGATORIES TO APPLICANT DAVID COX and FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS DIRECTED TO APPLICANT, DAVID COX** has been served on Applicant's attorney of record by mailing said copy on January 23, 2015 via First Class Mail (certified), postage fully prepaid to:

Mark S. Hubert, P.C.
Attn: Mark S. Hubert, Esq.
2300 SW First Ave., Suite 101
Portland, OR 97201

By: _____



Thomas P. Philbrick

Dated: _____

01/23/2015

EXHIBIT F

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In re application serial no. 85966358 (DR. VAPE)

Filed on June 21, 2013

BODY VIBE INTERNATIONAL, LLC

Opposer,

v.

Cox, David

Applicant.

)
)
)
) Opposition No. 91215512
)
)
)
)
)
)
)

Trademark Trial and Appeal Board
United States Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

**OPPOSER BODY VIBE INTERNATIONAL, LLC's FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS DIRECTED TO APPLICANT, DAVID
COX**

Opposer, **BODY VIBE INTERNATIONAL, LLC**, (hereinafter "Opposer"), by and through the undersigned counsel, pursuant to Section 406 of the Trademark Trial and Appeal Board Manual of Procedure and Federal Rule of Civil Procedure 34, hereby submits Opposer's First Set of Requests for Production of Documents and Things directed to Applicant, **DAVID COX**, (hereinafter "Applicant"), consisting of separate numbered requests, to be fully and fairly responded to by Applicant. Opposer requests that Applicant produce all documents and things requested herein within the time specified by the Rules.

To the extent permitted by the applicable rules, these Requests for Production are continuing in nature and, to the extent that Applicant may acquire additional knowledge or information which

enlarges, diminishes, or otherwise modifies such responses hereto, Applicant is requested to promptly serve full and complete supplemental responses hereto reflecting such knowledge and/or information and/or documents and things.

Applicant is also hereby notified that a party who produces documents and things for inspection and copying shall produce them as they are kept in the usual course of business and shall organize and label them to correspond with the categories in the request.

DEFINITIONS AND INSTRUCTIONS

1 The Definitions and Instructions contained in Opposer's First Set of Interrogatories, served simultaneously herewith, are incorporated herein.

2 For each and every document or thing to which a privilege is claimed, please produce a detailed privilege log pursuant to Rule 26(b)(5) identifying the documents and things in such a manner that will allow other parties to assess the applicability of the privilege claimed.

For purposes of the Privilege Log, the term **"identify,"** when used with reference to a **document or communication**, shall mean to state:

- a. its nature (e.g., letter, telegram, memorandum, chart, report, study, etc.), date, author, date and place of preparation, and the name and address of each recipient;
- b. the identifying number, letter, or combination thereof (e.g., "Bates" number), if any, and the significance or meaning of such;
- c. the identity of each signer to the document or communication and, if it was not signed, so state and give the name of the person or persons who authored or prepared it;
- d. the title or heading of the document or communication;
- e. its substance;
- f. its present (or, if unknown, the last-known) location and custodian;
- g. the identity of each person to whom a copy was sent, each date of its receipt, and each date of its transmittal or other disposition by (1) Applicant, and
(2) any other person (naming such other person) who, at any time, either received, transmitted, or otherwise disposed of such document or communication, and each copy thereof;
- h. the circumstances of each such receipt, and each transmittal or other disposition, including identification of the person from whom received and the person to whom transmitted;
- i. the name and address of each recipient of any copy of said document;
- j. the author's present or last affiliation with, or relationship to, Applicant, if any;
- k. the full name and present or last-known residence address of the author;
- l. the date of the document;
- m. the name and address of the person now having possession of the original and the

location of the original or, if this information is not presently known to Applicant, the name and address of each person known to Applicant now having possession of a copy thereof and the present location of each such copy;

n. whether Applicant is willing to produce such document voluntarily to Opposer for inspection and copying;

o. if such document was, but no longer is, in the answering party's possession or control, state whether it is

(1) missing or lost,

(2) has been destroyed,

(3) has been transferred voluntarily or involuntarily to others, or

(4) otherwise disposed of, and in each instance explain the circumstances surrounding the authorization for such disposition; and

p. each and every claim of privileged asserted.

3. Opposer expressly reserves the right to submit further discovery requests in this matter.

REQUESTS FOR PRODUCTION

1. All documents and things identified, used, reviewed or relied upon by Applicant, in any manner, in responding to all discovery propounded by Opposer in this action.
2. All documents and things evidencing and/or consisting of the bona fide advertising and promotion of Applicant's goods and services under the Accused Mark, if any, from its date of claimed first use to present.
3. All documents and things evidencing Applicant's first use of the Accused Mark, if any, on each and all of its recited goods and services.
4. All documents and things concerning any advertising, marketing or promotion strategies or plans for Applicant's Mark, whether past, present or future.
5. All documents and things evidencing each and every registration, live, cancelled or abandoned, and pending or lapsed applications for registration, whether under federal or state law, owned in part or in whole by, for the benefit of or filed by Applicant of any trademark.
6. All documents and things concerning Applicant's knowledge or awareness at any time of Opposer, Opposer's business or business practices and/or Opposer's use of Opposer's Mark.
7. All things consisting of samples of goods and services, if any, promoted or sold in commerce bearing the Accused Mark.
8. All documents and things consisting of licensing agreements for the Accused Mark or any other assignment, agreements, contracts or writings upon which Applicant will rely upon, in any manner, in this action.
9. All documents and things consisting of any attempts to enter into assignments, contracts or licensing agreements for the Accused Mark at any time, including but not limited to correspondence, electronic communications, negotiations, agreements or notes or memos concerning same.
10. All documents and things evidencing the channels of trade used or to be used by Applicant in marketing goods and services under the Accused Mark, whether past, present or in the future.
11. All documents and things evidencing correspondence, contracts and/or other agreements with Applicant's authorized dealers of its DR. VAPE branded electric vaporizers.
12. All documents and things evidencing Applicant's reasoning and decision behind selecting "green cross" imagery on the specimen of record for the Accused Mark.
13. All documents and things evidencing Applicant's attendance at events related to the medical marijuana industry, including, but not limited to registration documents and/or display table sign-up forms for medical marijuana related events.

14. All documents and things evidencing the classes of consumers to whom Applicant markets or intends to market goods and services under the Accused Mark, whether past, present or in the future.

15. All documents and things upon which Applicant will rely upon, in any respect, relative to its defenses to Opposer's claims as asserted in this action.

16. All documents and things that refer to or identify Applicant's customers, advertisers, vendors, authorized dealers and vendees, including but not limited to lists or compilations of every kind or manner, in connection with goods and services promoted and sold by Applicant under the Accused Mark.

17. All documents and things evidencing or relating in any respect or manner to any litigation, opposition, criminal action, arbitration, administrative action, proceeding, verbal or written complaints in which claims, litigation or administrative actions have been asserted, or the like, in which Applicant was or is a party, whether as a Plaintiff, Defendant, Applicant, Opposer, Registrant or Petitioner.

18. All documents and things evidencing revenues of Applicant from sales of goods or services under the Accused Mark, if any, from the date of claimed first use by Applicant to present.

19. All consumer, demographic, geographic, profiling, studies, reports, surveys, or the like which pertain to, address, or include the issues in this case and which pertain to consumers to whom either Opposer or Applicant markets, sells, advertises, promotes, or offers for sale goods or services.

20. All studies, surveys, market research, business research, tests, and demographic or consumer profile studies concerning the ultimate consumers or potential ultimate consumers of products or services actually or intended to be sold, offered for sale, advertised, or promoted by either Opposer or Applicant.

21. All documents and things pertaining to all past, present or anticipated future advertisements, online advertisements, social media or promotional materials that Applicant contends are relevant to this action, or upon which Applicant shall rely in this action, whether conducted by Opposer, Applicant or any third parties.

22. All documents and things pertaining to third party use of the Accused Mark. (including by any licensee(s))

23. All documents and things upon which Applicant will rely upon in claiming that there is or will be no likelihood of confusion between the goods and services offered by Opposer and Applicant under their respective marks.

24. All documents and things which support any of the factual denials which Applicant has asserted in any paragraph in connection with its operative answer of record filed in this action.

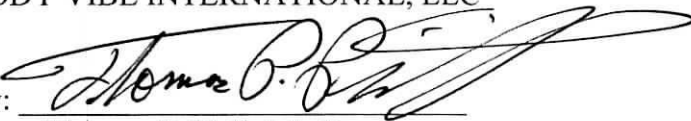
25. All documents and things identified in Applicant's responses to Opposer's first set of interrogatories served concurrently herewith.

DATED this 23rd day of January, 2015.

Respectfully submitted,

BODY VIBE INTERNATIONAL, LLC

By:


Thomas P. Philbrick, Esq.

John E. Russell, Esq.

Attorneys for Opposer

ALLMARK TRADEMARK®

2089 Avy Ave.

Menlo Park, CA 94025

Telephone: (650)233-2789

Facsimile: (650)233-2791

Email: tom@allmarktrademark.com

allmarktrademark@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER BODY VIBE INTERNATIONAL, LLC's FIRST SET OF REQUESTS FOR ADMISSION DIRECTED TO APPLICANT DAVID COX, FIRST SET OF INTERROGATORIES TO APPLICANT DAVID COX and FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS DIRECTED TO APPLICANT, DAVID COX** has been served on Applicant's attorney of record by mailing said copy on January 23, 2015 via First Class Mail (certified), postage fully prepaid to:

Mark S. Hubert, P.C.
Attn: Mark S. Hubert, Esq.
2300 SW First Ave., Suite 101
Portland, OR 97201

By: _____



Thomas P. Philbrick

Dated: _____

01/23/2015

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S MOTION TO COMPEL DISCOVERY AND REQUEST TO SUSPEND PROCEEDING/RESET TRIAL SCHEDULE PENDING DISPOSITION OF MOTION, DECLARATION OF THOMAS P. PHILBRICK IN SUPPORT OF OPPOSER'S MOTION TO COMPEL and ACCOMPANYING EXHIBITS** has been served on Applicant's address of record by mailing said copy on October 30, 2015 via First Class Mail (certified), postage fully prepaid to:

David Cox
2359 Erma Ct.
Springfield, OR 97477

By:

A handwritten signature in black ink, appearing to read "Thomas P. Philbrick", written over a horizontal line.

Thomas P. Philbrick

Dated:

October 30, 2015